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10/804,383

03/19/2004

George Austria

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EXAMINER

NINO, ADOLFO

ART UNIT

PAPER NUMBER

2831

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/804,383

Applicant(s)

AUSTRIA ET AL.

Examiner

Adolfo Nino

Art Unit

2831

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/28/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Miller (US 5,278,356).

Regarding claim 1, Miller discloses a cord and tubing cover (4), comprising: a flexible sheet (4; col. 2, lines 42-43) having a top surface and a bottom surface, with the bottom surface including: a pliable interior region (24) for covering one or more cords (28, 60) resting on a support surface, and first (12) and second exterior regions (12) bounding the interior region (fig. 1), wherein at least one of the first and second exterior regions (12) includes an adhesive material (16, 20) for securing the flexible sheet to the support surface.

Regarding claim 2, Miller discloses the cord and tubing cover (4) of claim 1 wherein the adhesive material (16, 20) comprises a two-sided adhesive tape (col. 4, line 7).

Regarding claim 3, Miller discloses the cord and tubing cover (4) of claim 2 wherein each of the first and second exterior regions (16, 20) includes a strip of the two-sided adhesive tape (fig. 1).

Regarding claim 4, Miller discloses the cord and tubing cover (4) of claim 2 further comprising removable release paper on the adhesive tape (not mentioned, but it

Art Unit: 2831

is inherent to have the removable release paper on the adhesive tape since the cover is shown as a roll in fig. 1 already with the two-sided adhesive tape attached).

Regarding claim 8, Miller discloses the cord and tubing cover of claim 1 wherein the adhesive material is sprayed onto the flexible sheet. Note that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. During examination, the patentability of a product-by-process claim is determined by the novelty and non-obviousness of the claimed product itself without consideration of the process for making it, which is recited in the claim. In re Thorpe, 227 USPQ 964 (Fed. Cir. 1985).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 2831

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 6, 9-11, 13-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 5,278,356) in view of Corpuel (US 6,137,901 B1).

Regarding claim 5, Miller discloses the cord and tubing cover (4) of claim 1 **except for** explicitly stating that the flexible sheet (4) comprises a non-skid material. Miller discloses the flexible sheet (4) to have been made of any suitable flexible synthetic or natural material such as vinyl (col. 3, lines 1-3). Corpuel shows that vinyl is a non-skid material (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the flexible sheet of Miller out of vinyl, since Corpuel teaches that vinyl is known as a non-skid material.

Regarding claim 6, the modified Miller discloses the cord and tubing cover (4) of claim 5 wherein the non-skid material comprises PVC foam (abstract of Corpuel).

Regarding claim 9, Miller discloses a roll of cord and tubing cover material (4), comprising: a roll (4) of flexible material (col. 3, lines 1-3) having a top surface (8) and a bottom surface (12), with the bottom surface (12) including a pliable interior region (24) for covering one or more cords resting on a support surface (fig. 2), **but Miller does not explicitly discloses** the roll being made of flexible non-skid material. Miller discloses the roll to have been made of any suitable flexible synthetic or natural material such as vinyl (col. 3, lines 1-3). Corpuel shows that vinyl is a non-skid material (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention

Art Unit: 2831

was made to have made the roll of Miller out of vinyl, since Corpuel teaches that vinyl is known as a non-skid material.

Regarding claim 10, the modified Miller discloses the roll of cord and tubing cover material (4) of claim 9 wherein the bottom surface (12) further includes first (16) and second (20) exterior regions bounding the interior region (24), with at least one of the first (16) and second (20) exterior regions including an adhesive material (16, 20) for securing the flexible non-skid material to the support surface (figs. 2-3).

Regarding claim 11, the modified Miller discloses the roll of cord and tubing cover material of claim 9 wherein the non-skid material comprises PVC foam (abstract of Corpuel).

Regarding claim 13, the modified Miller discloses the roll of cord and tubing cover material (4) of claim 9 wherein the roll includes 100 to 150 feet of flexible non-skid material (col. 1, lines 45-46, and 62-68 and col. 2, lines 1-2). Moreover, it would have been an obvious matter of design choice to have made the roll be 100-150 feet long, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re. Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 14, Miller discloses a cord and tubing cover (4), comprising: a flexible sheet (4) having a top surface (8) and a bottom surface (12), with the bottom surface (12) including a pliable interior region (24) for covering one or more cords and tubing resting on a support surface (fig. 2), **but Miller does not explicitly discloses** the cord and tubing cover being made of flexible non-skid material. Miller discloses the

Art Unit: 2831

cord and tubing cover to have been made of any suitable flexible synthetic or natural material such as vinyl (col. 3, lines 1-3). Corpuel shows that vinyl is a non-skid material (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the cord and tubing cover of Miller out of vinyl, since Corpuel teaches that vinyl is known as a non-skid material.

Regarding claim 17, the modified Miller discloses the cord and tubing cover (4) of claim 14 further comprising first (16) and second (20) exterior regions bounding the interior region, wherein at least one of the first and second exterior regions includes an adhesive material (col. 2, lines 48-50 of Miller) for securing the flexible sheet to the support surface (fig. 2).

Regarding claim 18, the modified Miller discloses the cord and tubing cover (4) of claim 17 wherein the adhesive material (16, 20) comprises a two-sided adhesive tape (col. 4, line 7).

Regarding claim 19, the modified Miller discloses the cord and tubing cover of claim 17 wherein the adhesive material is sprayed onto the flexible sheet. Note that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. During examination, the patentability of a product-by-process claim is determined by the novelty and non-obviousness of the claimed product itself without consideration of the process for making it, which is recited in the claim. In re Thorpe, 227 USPQ 964 (Fed. Cir. 1985).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 5,278,356) in view of Vockel et al. (US 5,223,330). Miller discloses the cord and tubing cover (4) of claim 1 **except for** the flexible sheet comprising a luminous material that glows in the dark. Vockel et al. teach that it is known to have a flexible material comprising a luminous material as set forth at column 1, lines 48-55. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the flexible sheet of Miller comprised a luminous material as taught by Vockel et al. in order for the cord and tubing cover of Miller to be able to glow in the dark as noted on column 4, lines 20-30 of Vockel et al.

Claims 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 5,278,356) in view of Corpuel (US 6,317,901 B1) as applied to claims 9 and 14, respectively, above, and further in view of Vockel et al. (US 5,223,330).

Regarding claim 12, Miller in view of Corpuel discloses the roll of cord and tubing cover material of claim 9 **except for** the nonskid material comprising a luminous material that glows in the dark. Vockel et al. teach that it is known to have a flexible material comprising a luminous material as set forth at column 1, lines 48-55. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the roll of cord and tubing cover material of Miller comprised a luminous



Art Unit: 2831

material as taught by Vockel et al. in order for the cord and tubing cover of Miller to be able to glow in the dark as noted on column 4, lines 20-30 of Vockel et al.

Regarding claim 16, Miller in view of Corpuel discloses the cord and tubing cover of claim 9 **except for** the flexible sheet comprising a luminous material that glows in the dark. Vockel et al. teach that it is known to have a flexible material comprising a luminous material as set forth at column 1, lines 48-55. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the flexible sheet of Miller comprised a luminous material as taught by Vockel et al. in order for the cord and tubing cover of Miller to be able to glow in the dark as noted on column 4, lines 20-30 of Vockel et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Haibach et al. (US 5,211,784; 5,206,070) disclose a method of securing electronic cables and a zone coated adhesive material. Gilbert (US 4,781,958) discloses a sealed edge detectable tape. Katz (US 5,814,767) discloses a flexible plastic ducting. Strauss et al. (US 4,676,850) disclose a method of making an electrical cable. Lewis (US 4,640,032) discloses a wire and cable-organizing sleeve. Willette (US 4,319,075) discloses a sealed routing of under carpet cable. Jupina (US 6,558,786 B1) discloses a continuous foam rubber gripper. Elsasser et al. (US 5,826,382) disclose an elongated member of extruded plastic. Saylor (US 5,614,292) discloses a thermal walkway cover.

Art Unit: 2831

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adolfo Nino whose telephone number is (571) 272-1981. The examiner can normally be reached on M-F (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A Reichard can be reached on (571) 272-2800 ext. 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AN

 10/14/04  
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